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February 23, 1994

VIA FEDERAL EXPRESS

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

ATTENTION: Allocations Branch

Re: MM Docket No. 93-316
Amendment of FM Table of Allotments
(Douglas, Unionville, and Tifton, Georgia)

Dear Mr. Caton:

On behalf of our client, Orchon Media, Inc., permittee of unbuilt station WKZZ(FM), Douglas, Georgia, we submit herewith an original and four (4) copies of its comments and counterproposal in the above proceeding.

Also enclosed is an additional copy of the comments and counterproposal which we would appreciate your returning to the undersigned in the enclosed postage-paid, self-addressed envelope after it has been date-stamped by your office.

Should you or any members of your staff have questions concerning the enclosed, please contact the undersigned for clarification. Thank you for your cooperation in this matter.

Very truly yours,

MCCAMPBELL & YOUNG, P.C.

By: Robert S. Stone
Robert S. Stone

RSS/cs

Enclosures: as stated
cc: Orchon Media, Inc.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	MM Docket No. <u>93-316</u>
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	RM-8403
FM Broadcast Stations.)	
(Douglas, Unionville, and Tifton Georgia))	

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To: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL OF ORCHON MEDIA, INC.

Orchon Media, Inc. ("Orchon" or "Petitioner"), permittee of Station WKZZ(FM), Channel 223A, Douglas, Georgia, by counsel, and in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned rule making proceeding, hereby respectfully submits its comments and counterproposal. Specifically, Petitioner counterproposes the reclassification and reallocation of FM Channel 223A at Douglas, Georgia as follows:

Douglas, Georgia

Present

223A, 258C, 294C1

Proposed

258C, 294C1

Tifton, Georgia

Present

262C

Proposed

223C3, 262C

In support whereof, the following is shown:

1. On January 4, 1994, the Acting Chief, Allocations Branch, released the NPRM in response to Orchon's petition filed November 12, 1993. In its petition, Orchon requested the reclassification and reallocation of the channel on which it is authorized to construct a new FM station from Douglas, Georgia FM Channel 223A to Unionville, Georgia FM Channel 223C3. Its request included a showing that such a reclassification and reallocation would be in full compliance with the Commission's minimum spacing and city-grade coverage requirements. The proposed allocation and reclassification was also shown to be mutually exclusive with Orchon's existing assignment on FM 223A at Douglas, Georgia.

2. As described by Orchon and as reflected in the NPRM, the community of Unionville, Georgia is listed in the census reports by the U. S. Bureau of the Census with a population of 2,710 persons. Although designated by the U. S. Census as a Census Designated Place ("CDP"), it was Orchon's belief that such a listing nevertheless served to demonstrate that Unionville is in fact a "geographic identifiable population grouping." *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 51 RR 2d 807 (1982). Indeed, the Commission has specifically held that being listed as a CDP is enough. *Pierce, et al. Texas*, 8 FCC Rcd 3528, 3530 (1993) ("Marcum as a CDP, which is sufficient to establish community status.")

3. Notwithstanding the above, the NPRM questioned the status of Unionville as a community, and called upon Orchon to present information demonstrating that Unionville has sufficient social, economic, cultural, and governmental indicia to qualify it as a "community" for allocation purposes. In addition, and with respect to Orchon's request to invoke the provisions of § 1.420(i) of the Commission's rules, which permit modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest, the Commission requested information showing both areas and populations which would receive new service and which would lose existing service

if Channel 223 were to be reallocated from Douglas, in light of Orchon's intention to relocate its transmitter.¹ Finally, the NPRM called for the number of reception services available in both gain and loss areas.

4. In accordance with the NPRM's directive, Orchon has analyzed its earlier proposal in light of the Commission's holding that, while the Census Bureau's listing of a community as a CDP raises a strong presumption of community status, that presumption is not irrebuttable. *Searles Valley, California*, 3 FCC Rcd 5221 (1988). As a result, while Orchon believes the sheer size of the community of Unionville (2,710 persons) more than qualifies it as a community for allotment purposes, Orchon has concluded that new service can best be provided by WKZZ from the transmitter location specified in its petition for rule making to the area by counterproposing the reallocation of FM Channel 223 to the community of Tifton, Georgia, a community closer to Orchon's allotment reference coordinates and whose community status is beyond question. *See, Clarkrange and Monterey, Tennessee*, 8 FCC Rcd 8509 (1993). As shown below, in addition to meeting minimum spacing and city-grade coverage requirements, the reallocation of Channel 223 to Tifton as a class C3 facility would represent a preferred arrangement of allotments consistent with *Revision of FM Assignment Policies and Procedures, supra*.

5. Reference to the Commission's allotment criteria as applied to Orchon's counterproposal herein reveals that the proposal would not involve either gain or loss of first full-time aural service, second full-time aural service, or first local service. Thus, the Commission's fourth allotment criteria, "other public interest matters", govern the merits of the case. In that regard, the Commission's attention is directed to the attached engineering statement of Orchon's

¹ Although the NPRM does not address the matter, it is unclear whether the Commission is aware that WKZZ is an unbuilt station and has not commenced operations.

consulting engineer, Dwight R. Magnuson, which confirms that the areas represented by theoretical coverage of Douglas, Georgia Channel 223A and Tifton, Georgia Channel 223C3 both currently receive abundant coverage from numerous radio stations during both daytime and nighttime hours. Further, reallocation of Orchon's channel from Douglas to Tifton would not result in the loss of Douglas's first or second local service. In fact, even when taking into account non-commercial educational FM station WABR-FM, Tifton, Georgia, Tifton is now served by no more local primary radio transmission services than Douglas. Douglas, meanwhile, presently enjoys local transmission service from two more commercial FM facilities than Tifton, independently of Orchon's proposed WKZZ.

6. According to the 1990 census, the city of Tifton is slightly larger than Douglas, having a population of 14,215 persons.² Tifton has been nationally recognized as the cleanest community in the United States and named as one of the one hundred best small towns in America. It has more than doubled in size since 1950.

7. Tifton's government is operated by a five-member city commission with an appointed city manager as chief administrative officer. Natural gas, water and garbage collection are supplied by the city of Tifton. Twenty-three full-time and fifteen volunteer fire personnel comprise the city's fire department. Tifton's police protection is provided by fifty full-time police personnel, twenty patrol cars, two motorcycles and four investigating officers.

8. Tifton's financial facilities include six banks with over \$13 billion in assets and two savings and loan facilities with \$182.5 million in assets. Fifty restaurants, one hotel, fourteen motels, and numerous meeting facilities accommodate all kinds of public events. In addition to public schools operated by the Tift County Board of Education and two private

² The 1990 population of Douglas, meanwhile, was 14,000.

schools, Tifton is home for Abraham Baldwin College, a two-year coeducational school offering associate degrees in arts, science, agriculture, education, secretarial science, accounting, data processing, business administration, and forestry. Abraham Baldwin College is the largest residential junior college in entire state of Georgia.

9. Tift General Regional Hospital is located in Tifton. The hospital offers a one hundred sixty-eight bed full-service facility, including both basic and sophisticated services to patients in the area. Fifty-five physicians and twenty-one medical specialties are available there.

10. In addition to churches serving all principal denominations, Tifton is home to numerous business, civic, fraternal, and other organizations, including the American Legion, American Legion Auxiliary, Boy Scouts, American Association of University Women, Civitan Club, DAR, Eastern Star, Elks, Elks Auxiliary, Future Farmers of America, Future Homemakers of America, Girl Scouts, Junior Chamber of Commerce, Junior Women's Club, Kiwanis Club, Lions Club, Masonic Lodge, National Secretary Association, Optimist Club, Pilot Club, Rainbow Girls, Rotary Club, Sertoma Club, Toastmaster Club, Tifton-Tift County Art Council, United Daughters of Confederacy, Veterans of Foreign Wars, and Woodmen of the World. The above qualities, together with Tifton's strategic location on a major interstate route (Interstate 75) clearly demonstrate Tifton's preference over Douglas for FM Channel 223.

11. As noted above, because WKZZ, Douglas, Georgia is an unbuilt station, it does not represent service on which the public has come to rely. The change in community as proposed by Orchon herein will not cause any disruption to existing service. *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992); *Pawleys Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993). Thus, the Commission need not weigh the loss or disruption of existing service against "theoretical" gains in service as proposed by Orchon. Nor would there be a creation of unserved or underserved areas should the Commission adopt Orchon's proposal.

12. Notwithstanding the above, Orchon has caused a study to be made of the areas and populations which will receive new service and the areas and populations which would theoretically lose service if Channel 223C3 is reallocated to Tifton. As set forth in the attached engineering statement, an area of 3,942 square kilometers containing a population of 84,204 persons will gain new reception service based on Orchon's proposed reallocation, while an area of only 1,721 square kilometers containing a population of only 31,226 persons would theoretically lose "existing" service. As the study reflects, Orchon's proposal represents a net gain of 2,221 square kilometers and 52,978 person who would receive new service. Clearly Orchon's proposal fulfills each and every one of the Commission's goals in fairly, equitably, and efficiently distributing frequencies among the several states and communities pursuant to § 307(b) of the Communications Act of 1934, as amended.

13. The public would greatly benefit from such an expanded area of coverage. Operating as a class C3 facility, WKZZ could provide wide-area coverage with Tifton as its community of license, whereas its present assignment on FM Channel 223A at Douglas, Georgia would serve far fewer people and a much smaller area. Orchon's counterproposal would fully comply with all Commission minimum spacing and city-grade coverage requirements. As before, the reallocation proposed herein would be mutually exclusive with Orchon's existing assignment on FM Channel 223A at Douglas, Georgia. Thus, Orchon's counterproposal as set forth herein fully complies with § 1.420(g) and § 1.420(i) of the Commission's rules.

14. Finally, upon the Commission's reallocation of FM Channel 223 to the Community of Tifton, Georgia as FM Channel 223C3, Orchon hereby formally restates its commitment to promptly file an application for modification of its construction permit so as to specify operation as a class C3 facility, and upon grant thereof, to promptly construct its station

so as to provide the community of Tifton and surrounding areas with new commercial FM broadcast service as quickly as possible.

WHEREFORE, premises considered, Orchon Media, Inc. respectfully urges the Commission to amend its *Table of FM Allotments* so as reallocate FM Channel 223A, Douglas, Georgia to the community of Tifton, Georgia as FM Channel 223C3.

Respectfully Submitted,

ORCHON MEDIA, INC.

MCCAMPBELL & YOUNG, P.C.
Its Attorneys

By: 
Robert S. Stone

MCCAMPBELL & YOUNG
A Professional Corporation
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P. O. Box 550
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ENGINEERING STATEMENT

Dwight R. Magnuson hereby declares as follows:

1. I prepared the Engineering Statement which accompanied the petition for rule making by Orchon Media, Inc., RM-8403, to substitute Channel 223C3 at Unionville, Georgia, for Channel 223A at Douglas, Georgia. Orchon has since decided to request the Commission move Channel 223C3 to Tifton, Georgia instead of Unionville, Georgia. My qualifications are a matter of record at the Commission.

2. I have studied the gain and loss area for WKZZ(FM) if the station is moved from Channel 223A at Douglas to Channel 223C3 at Tifton, at the allocation point proposed in RM-8403. The loss area is defined as the area within the F(50,50) predicted 1 mV/m contour of WKZZ(FM) on Channel 223A at Douglas which would not be within the predicted 1 mV/m service contour were WKZZ(FM) to operate on Channel 223C3 at Tifton. The gain area is defined as the area which would be within the F(50,50) predicted 1 mV/m contour of WKZZ(FM) operating on Channel 223C3 at Tifton which is not within the the 1 mV/m contour of WKZZ(FM) at Douglas. The gain and loss areas are depicted on the attached map.

3. Following is a table of areas and populations:

	<u>Area</u> (sq. km.)	<u>Population</u> (1990 Census)
Total 1 mV/m coverage Channel 223C3 at Tifton	4,773	89,912
Gain area after move to Tifton	3,942	84,204
Loss area after move to Tifton	1,721	31,226
Net gain (gain minus loss)	2,221	52,978

4. Both the entire gain area and the entire loss area receive primary service from more than five aural broadcast stations, not including WKZZ(FM). Primary service is defined as 1 mV/m FM and .5 mV/m AM daytime. Interference-free nighttime signals were not examined because there are more than five FM signals in both the loss and gain areas. The following is a partial list of stations providing primary service to the loss and gain areas:

a. Stations providing primary service to the loss area:


WDMG-FM, Douglas, GA
WDMG(AM), Douglas, GA
WOKA-FM, Douglas, GA
WOKA(AM), Douglas, GA
WULS(FM), Broxton, GA (APP)
WBYZ(FM), Baxley, GA
WUFE(AM), Baxley, GA
WWFP(FM), Pearson, GA (CP)
WVOH-FM, Hazlehurst, GA
WVOH(AM), Hazlehurst, GA
WKXH-FM, Alma, GA
WULF(AM), Alma, GA
WXVS(NCE-FM), Waycross, GA
and others

b. Stations providing primary service to the gain area:

WDMG-FM, Douglas, GA
WDMG(AM), Douglas, GA
WOKA-FM, Douglas, GA
WOKA(AM), Douglas, GA
WGPC-FM, Albany, GA
WJIZ-FM, Albany, GA
WJYF(FM), Nashville, GA
WNGA(AM), Nashville, GA
WSGY(FM), Tifton, GA
WTIF(AM), Tifton, GA
WWGS(AM), Tifton, GA
WABR(NCE-FM), Tifton, GA
WMTM-FM, Moultrie, GA
WMTM(AM), Moultrie, GA
WKAA(FM), Ocilla, GA
WSIZ(AM), Ocilla, GA
WLPP(FM), Ocilla, GA
and others

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 1994.


Dwight R. Magnuson, P.E.
P.O. Box 2761
Knoxville, TN 37901
Tel. 615/525-6358

